AMENDMENTS TO THE DRAWINGS

In accordance with U.S. Patent and Trademark Office practice, proposed drawing changes as REPLACEMENT SHEETS are attached, wherein Applicant proposes to amend the drawings in the above-identified application as follows:

Please amend Figure 4 as follows:

Please replace "31" with -- 41 --.

Please replace "32" with -- 42 --.

Please replace "33" with -- 43 --.

Please replace "34" with -- 44 --.

Please replace "101" with -- 31 --.

Please replace "102" with -- 32 --.

Please replace "103" with -- 33 --.

Please replace "104" with -- 34 --.

Please replace "105" with -- 35 --.

No new matter has been added. Approval is earnestly requested.

REMARKS

This is in full and timely response to the Office Action dated July 13, 2009.

Claims 27-48 are currently pending in this application, with claims 27 and 36 being independent.

No new matter has been added.

Reexamination in light of the following remarks is respectfully requested.

Entry of amendment

This amendment *prima facie* places the case in condition for allowance. Alternatively, it places this case in better condition for appeal.

Accordingly, entry of this amendment is respectfully requested.

Prematureness

Applicant, seeking review of the *prematureness* of the final rejection within the Final Office action, respectfully requests reconsideration of the finality of the Office action for the reasons set forth hereinbelow. See M.P.E.P. §706.07(c).

If the allowance of the claims is not forthcoming at the very least and a new grounds of rejection is made at least against the claims, then a *new non-final Office Action* is respectfully requested at least for the reasons provided hereinbelow.

Final Office Action after a Request For Continued Examination (RCE)

U.S. Patent and Trademark Office practice and procedures pursuant to M.P.E.P. §§706.07(b) provide that it *__would not be proper to make final__* a first Office action in a continuing or substitute application >or *__an RCE__*< where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because

(A) new issues were raised that required further consideration and/or search, or

(B) the issue of new matter was raised.

Here, an Amendment in Response to Final Office Action under 37 CFR 1.116 was filed on March 10, 2009.

The Advisory Action dated March 18, 2009 denied entry by contending that the Amendment of March 10, 2009 raised new issues that required further consideration and/or search.

The RCE filed on April 23, 2009 requested entry of the Amendment of March 10, 2009.

Nevertheless, the status of that Office Action of July 13, 2009 has been indicated as FINAL (Item 2a found on page 1 of the Office Action).

Withdrawal of the finality of the Office Action is respectfully requested.

Claim rejections

While not conceding the propriety of these rejections and in order to advance the prosecution of the present application, the rejected claims have been canceled.

Withdrawal of these rejections is respectfully requested.

Newly added claims

Claims 27-35 – Claims 28-35 are dependent upon claim 27. Claim 27 is drawn to a data transmitting method comprising the steps of:

> confirming presence or absence of a real time packet request, said real time packet request commanding a stream transmitting portion to schedule a transmission of a real time packet;

> confirming presence or absence of a non-real time packet request only after confirming the absence of said real time packet request, said non-real time packet request commanding said stream transmitting portion to schedule a transmission of a non-real time packet.

Claims 36-48 – Claims 37-48 are dependent upon claim 36. Claim 36 is drawn to a data transmitting apparatus comprising:

> packetizing blocks configured to packetize streams of data into streams of packets, said streams being streams of real time packets and a stream of non-real time packets;

> a stream transmitting portion configured to confirm presence or absence of a real time packet request and to confirm presence or absence of a non-real time packet request, the presence or absence of the non-real time packet request being confirmed only after confirming the absence of said real time packet request.

U.S. Patent No. 6,560,230 (Li) – Li arguably discloses that if the set of eligible packets includes packets which have two or more different priorities, parent scheduling engine 60 identifies the highest priority assigned to one or more packets in the eligible set (Li at column 13, lines 11-13).

Any packet in the eligible set which does not have the highest priority is removed from the set (step 118) (Li at column 13, lines 13-15).

However, Li *fails* to disclose, teach, or suggest a step of *confirming presence or absence of a non-real time packet request only after confirming the absence of said real time packet request, said non-real time packet request commanding said stream transmitting portion to schedule a transmission of a non-real time packet*, as is in claim 27.

Moreover, Li *fails* to disclose, teach, or suggest *a stream transmitting portion configured to confirm presence or absence of a real time packet request and to confirm presence or absence of a non-real time packet request, the presence or absence of the non-real time packet request being confirmed only after confirming the absence of said real time packet request*, as is in claim 36.

U.S. Patent Application Publication No. 2003/0119556 (Khan) – Paragraph [0015] of Khan arguably discloses the following:

> [0015] FIG. 2 illustrates the radio access network 12 in more detail showing a method used in the past for connecting the radio base stations 14 to a base station controller 16. As shown in FIG. 2, the single base station controller 16 is connected with a series of radio base stations 14, which are denoted as RBS1 and RBS2. Although only two radio base stations 14 are shown, in practice there would likely be many more. FIG. 2 shows *packets* being transmitted on the backhaul between the base station controller 16 and the radio base stations 14. *The packets may be data packets and/or compressed voice packets*. For purposes of explaining the present invention, it is assumed that all packets being transmitted along the chain are of the same type and, absent the present invention, would be considered to be of equal priority.

However, Khan *fails* to disclose, teach, or suggest a step of *confirming presence or absence of a non-real time packet request only after confirming the absence of said real time packet*

request, said non-real time packet request commanding said stream transmitting portion to schedule a transmission of a non-real time packet, as is in claim 27.

Moreover, Khan *fails* to disclose, teach, or suggest *a stream transmitting portion configured to confirm presence or absence of a real time packet request and to confirm presence or absence of a non-real time packet request, the presence or absence of the non-real time packet request being confirmed only after confirming the absence of said real time packet request*, as is in claim 36.

U.S. Patent No. 5,539,729 (Bodnar) – The paragraph in Bodnar beginning at column 7, line 6, arguably discloses the following:

> If, in decision diamond 704, the packet does not contain voice samples, then processing continues to decision diamond 710, where a determination is made if the counter is equal to zero. If the overload counter is equal to zero, then the system is in "overload," and processing continues to action box 712, where the packet is dropped and processing continues to the return from interrupt circle 708. If, in decision diamond 710, the counter is not equal to zero, then the packet is moved from receive buffer 81 to the application processor interface 89 in action box 714. Processing then continues to action box 716, where the overload counter is decremented and processing then returns from interrupt at circle 708.

However, Bodnar *fails* to disclose, teach, or suggest a step of *confirming presence or absence of a non-real time packet request only after confirming the absence of said real time packet request, said non-real time packet request commanding said stream transmitting portion to schedule a transmission of a non-real time packet*, as is in claim 27.

Moreover, Bodnar *fails* to disclose, teach, or suggest *a stream transmitting portion configured to confirm presence or absence of a real time packet request and to confirm presence or absence of a non-real time packet request, the presence or absence of the non-real time packet*

request being confirmed only after confirming the absence of said real time packet request, as is in claim 36.

Allowance of the claims is respectfully requested.

Official Notice

There is no concession as to the veracity of Official Notice, if taken in any Office Action.

An affidavit or document should be provided in support of any Official Notice taken. 37 C.F.R. 1.104(d)(2), M.P.E.P. § 2144.03. See also, *Ex parte Natale*, 11 USPQ2d 1222, 1227-1228 (Bd. Pat. App. & Int. 1989)(failure to provide any objective evidence to support the challenged use of Official Notice constitutes clear and reversible error).

Extensions of time

Please treat any concurrent or future reply, requiring a petition for an extension of time under 37 C.F.R. §1.136, as incorporating a petition for extension of time for the appropriate length of time.

The Commissioner is hereby authorized to charge all required fees, fees under 37 C.F.R. §1.17, or all required extension of time fees.

Fees-general authorization

The Commissioner is hereby authorized to charge any deficiency in fees filed, asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm).

If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

Conclusion

This response is believed to be a complete response to the Office Action. Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers.

For the foregoing reasons, all the claims now pending in the present application are allowable, and the present application is in condition for allowance. Accordingly, favorable reexamination and reconsideration of the application in light of the remarks is courteously solicited.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone Brian K. Dutton, Reg. No. 47,255, at 202-955-8753.

Dated: November 13, 2009

Respectfully submitted,

By_____
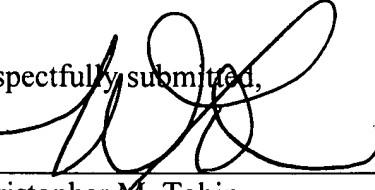
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